

ORR Recommendation R-16

Subject: Flexibility When Site Exceeds Only Secondary Non-Health-Based Standards

Recommendation: The Part 201 statute and the Part 5 rules should be amended to provide the DEQ with the flexibility to approve a limited closure at a site where hazardous substances are migrating onto adjoining properties at levels that exceed only secondary non-health-based standards and where the affected property is hooked up to municipal water. Specifically, the amendments should authorize the DEQ to approve a closure at these sites according to the following process:

1. The owner/operator develops data regarding the plume-migration characteristics and information regarding property owners within the plume that are hooked up to municipal water.
2. The owner/operator sends notice to all identified property owners informing them that contamination exceeding secondary non-health-based standards is migrating onto their property and that the owner/operator has requested a no-further-action letter from the DEQ, and the property is a "Facility" subject to disclosure obligations under Part 201 or Part 213.
3. The notice should provide each landowner a period of time (such as 21 days) to respond if they feel that the DEQ should not issue the no-further-action letter.
4. If the DEQ does not receive any responses within that time period, the DEQ may move forward with issuing the no-further-action letter. On the other hand, if one or more landowners respond, the DEQ must review each response to determine whether the migrating contamination is reasonably anticipated to impair the use of the property. If no such impairment is found at any of the properties, the DEQ may issue the no further-action letter.
5. The Part 201 statute and rules should explicitly state that this process in no way affects or limits any rights of a property owner.

Justification: See Issue Paper "R-16" in Appendix A on Pg. A-60.

Appendix A

No. R-16

Subject: Flexibility When Site Exceeds Only Secondary Non-Health-Based Standards

Remedy: ☐ Process ☒ Rules ☒ Statute

Background/Issue: Michigan's rules do not allow for appropriate flexibility to close a site where there is off-site migration of groundwater exceeding secondary non-health based standards. Specifically, the requirement to obtain landowner signatures on restrictive covenants should not be automatically required when a landowner is hooked up to municipal water.

Proposed Solution: The Part 201 statute and the Part 5 rules should be amended to provide the DEQ with the flexibility to approve a limited closure at a site where hazardous substances are migrating onto adjoining properties at levels that exceed only secondary non-health-based standards and where the affected property is hooked up to municipal water. Specifically, the amendments should authorize the DEQ to approve a closure at these sites according to the following process:

1. The owner/operator develops data regarding the plume-migration characteristics and information regarding property owners within the plume that are hooked up to municipal water.

2. The owner/operator sends notice to all identified property owners informing them that contamination exceeding secondary non-health-based standards is migrating onto their property and that the owner/operator has requested a no-further-action letter from the DEQ, and the property is a "Facility" subject to disclosure obligations under Part 201 or Part 213.
3. The notice should provide each landowner a period of time (such as 21 days) to respond if they feel that the DEQ should not issue the no-further-action letter.
4. If the DEQ does not receive any responses within that time period, the DEQ may move forward with issuing the no-further-action letter. On the other hand, if one or more landowners respond, the DEQ must review each response to determine whether the migrating contamination is reasonably anticipated to impair the use of the property. If no such impairment is found at any of the properties, the DEQ may issue the no further-action letter.
5. The Part 201 statute and rules should explicitly state that this process in no way affects or limits any rights of a property owner.

Rationale for Change/Additional Comments: These changes will lead to more closures while still protecting the rights of adjoining landowners.